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who irrigated the crop in the applicable years;

(ii) NASS harvested non-irrigated yield for the crop, if available, for producers who did not irrigate the crop in the applicable years; or

(iii) NASS harvested blended yield for all acreage, regardless of whether or not the acres were irrigated or non-irrigated, for all crops in all counties where the yields in paragraphs (c)(3)(i) and (ii) of this section are unavailable.

(4) If NASS harvested acreage yield data is not available, the Deputy Administrator shall assign a yield to be used in paragraph (c)(2)(ii)(B) of this section.

§ 1412.304 Submitting production evidence.

(a)(1) Reports of production evidence must be submitted by producers when the owner elects to:

(i) Partially update the yield for all covered commodities on the farm in accordance with § 1412.303; or

(ii) Establish a direct payment yield for soybeans or other oilseeds for the farm in accordance with § 1412.302.

(2) Producer or third-party certification shall not be accepted as proof of production evidence.

(3) Reports of production evidence for all covered commodities shall be provided to the county committee of the county where the farm is administratively located, by farm and crop in such manner as required by CCC on a CCC-approved standard, uniform form designated by CCC.

(b)(1) When disposition of production has been through commercial channels, CCC may require the producer to furnish documentary evidence in order to verify the information provided on the report of production. Acceptable evidence may include, but is not limited to, such items as:

(i) Production approved by the county committee for Loan Deficiency Payments;

(ii) Commercial receipts;

(iii) Gin records;

(iv) Settlement sheets;

(v) Warehouse ledger sheets;

(vi) Elevator receipts or load summaries, supported by other evidence showing disposition, such as sales documents;

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(vii) Evidence from harvested or appraised acreage, approved for FCIC or multi-peril crop insurance loss adjustment settlement; or

(viii) Other production evidence determined acceptable by the Deputy Administrator.

(2) Such production evidence must show:

(i) The producer's name,

(ii) The commodity,

(iii) The buyer or name of storage facility,

(iv) The Date of transaction or delivery, and

(v) The quantity.

(c) When production of a covered commodity has been disposed of through non-commercial channels, such as used for feed, grazing, or silage, if Loan Deficiency Payments are not available, but crop insurance records or other FSA records indicate that the use of the crop was for silage, hay, or grazing, then county committee will assign production for that year based on the actual grain yield of three similar farms for the applicable year. If producers cannot meet any of these requirements or their crop suffered a low yield, then 75 percent of the county average yield as determined in accordance with § 1412.302(b)(4) will be used.

(d) CCC may verify the production evidence submitted with records on file at the warehouse, gin, or other entity which received or may have received the reported production.

§ 1412.305 Incorrect or false production evidence.

(a) If production evidence is false or incorrect, as determined by the county committee, the county committee shall determine whether the owner or producer submitting the production evidence for a farm acted in good faith or took action to defeat the purpose of the program.

(b)(1) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took action to defeat the purpose of the program, the county committee shall:

(i) Require a refund of all direct and counter-cyclical payments earned for

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the farm for the first year such payments were made;

(ii) Reduce the counter-cyclical payment yields for all crops on the farm to equal the direct payment yield for all crops except oilseeds. For all oilseeds on the farm, both the direct and counter-cyclical payment yields shall be reduced to 75 percent of the county average yield as determined in accordance with § 1412.302(b)(4). That yield shall then be reduced by the applicable direct payment yield factor in accordance with § 1412.302(a)(1); and

(iii) Subject to paragraph (a)(2)(i) of this section, require a refund of an amount equal to the following for each covered commodity and peanuts for each year the false, incorrect or unacceptable yield was used to make payments under the contract:

(A) The sum of the direct and counter-cyclical payments made using the false, incorrect or unacceptable evidence, minus

(B) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (b)(1)(ii) of this section.

(2) Notwithstanding paragraph (b)(1) of this section, if the county committee determines that the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took action to defeat the purpose of the program, the Deputy Administrator may take further action, including but not limited to any or all of the following:

(i) Make a further yield reduction for part or all of the covered commodities and peanuts on the farm;

(ii) Make further payment reductions or refunds;

(iii) Determine that the owner or producer who submitted the evidence is ineligible for participation in future contracts; or

(iv) Take other legal action.

(c) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence acted in good faith and did not take action to defeat the purpose of the program, the county committee shall:

(1) Correct the counter-cyclical yield for the applicable crop to equal the yield that would have been calculated in accordance with § 1412.303 based on accurate production evidence; and

(2) Require a refund of an amount equal to the following for each covered commodity and peanuts for each year the false, incorrect or unacceptable yield was used to make payments under the contract:

(i) The sum of the direct and counter-cyclical payments made using the false, incorrect or unacceptable evidence, minus

(ii) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (c)(1) of this section.

Subpart D—Direct and Counter-Cyclical Program Contract Terms and Enrollment Provisions for Covered Commodities 2002 through 2007 and for Peanuts 2003 through 2007

SOURCE: 67 FR 64751, Oct. 21, 2002, unless otherwise noted.

§ 1412.401 Direct and counter-cyclical program contract.

(a)(1) With respect to Fiscal Year 2002 payments, CCC will offer to enter into a contract with eligible producers of covered commodities and historical peanut producers on October 1, 2002 through the date announced by CCC. With respect to Fiscal Years 2003 through 2007, CCC shall offer to annually enter into a contract with an eligible producer on a farm having base acreage with respect to a covered commodity; and for a farm with peanut base acreage and yield assigned in accordance with subpart G of this part, at the beginning of each such fiscal year 2003 through 2007 through the date announced by CCC for each such year.

(2)(i) Eligible producers may execute and submit a contract to the county FSA office where the records for the farm are administratively maintained not later than June 1 of the fiscal year in which the direct and counter-cyclical payments are requested.